IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 22ND AUGUST 2006 / 31ST SRAVANA 1928

WP(C).No. 21874 of 2006(D)

PETITIONER:

KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM,
REP. BY ITS DEPUTY LAW OFFICER
SHRI. RENJITH JOSEPH.

BY ADV. SRI.P.PARAMESWARAN NAIR, SC, KSRTC

RESPONDENTS:

B.SREEDHARAN NAIR, (RETD. ATO),
ARCHANA NIVAS, CHERIYAKONNI,
ARUVIKKARA, NEDUMANGAD, TRIVANDRUM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.8.2006 ALONG WITH WPC NO.21883/06 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A. K. Basheer, J.

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W.P.(C)Nos.21874,21883, 21887, 21944, 21945, 21946, 21947, 21948, 21949, 21950, 21951, 21952, 21953, 21954, 21955, 21956, 21957, 21958, 21959, 21971, 21972, 21975 & 22475 Of 2006

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Dated this the 22nd day of August, 2006.

JUDGMENT

Kerala State Road Transport Corporation (for short 'the Corporation') is the petitioner in this bunch of writ petitions. What is impugned in these petitions is the common order passed by the Kerala Lok Ayukta in a batch of cases filed by some of the employees of the Corporation claiming Leave Surrender benefits payable to them in terms of a bipartite agreement.

2. By the impugned order, a copy of which is on record as Ext.P3, the Lok Ayukta directed the Corporation to pay the Leave Surrender benefits to the respondents/complainants in terms of the bipartite agreement within two months from the date of receipt of a copy of the order. The Corporation was further directed to file an action taken report after complying with the order.

3. It is contended by the learned Standing Counsel for the Corporation that the Lok Ayukta had no jurisdiction to entertain complaints filed by the respondents in these writ petitions, since the claim made by them would be squarely hit by Section 8 read with the second schedule of the Kerala Lok Ayukta Act, 1999. The claim would fall outside the jurisdiction of the Act since it can be treated as one falling within the expression “pay”. It is further contended that the claim being “terminal leave surrender” and “leave salary”, the Lok Ayuktha ought

not to have entertained the complaints. I am afraid the above contention is totally misconceived.

4. It is true that Section 8 of the Act stipulates that the Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation under the Act in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule. Sub-section (1) of Section 8 of the Act which alone is relevant for the purpose of these cases reads thus:

> **"8. Matters not subject to investigation.--** (1) Except as hereinafter provided, the Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation under this Act, in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule."

Clause (d) of the Second Schedule which is also relevant, reads thus:

> "(d) Action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but, not including actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service." (emphasis supplied)

It is contended by the learned counsel that the claim made by the respondents/claimants related to their "pay" arising from "conditions of service". According to the learned counsel, the Lok Ayukta had no jurisdiction to adjudicate on the action taken by the Corporation in that regard in view of the prohibition contained in Section 8(1) read with Schedule II. However, a perusal of

clause (d) in Schedule II shows that an exception has been carved out in the clause itself in respect of actions relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service.

5. It is the admitted position that a bipartite agreement was executed between the Corporation and various unions representing its employees, on April 13, 1999. Clause XXIV of the bipartite agreement is extracted hereunder:

> "Surrender of Earned leave will be re-introduced in K.S.R.T.C. As in Government twenty days of earned leave/full pay leave can be surrendered in a Calender Year. At the time of retirement, Earned leave/full pay leave upto 300 (Three hundred only) days can be surrendered. Subsequent amendments effected by Government from time to time will also be made applicable." (emphasis supplied)

The above clause was considered by the Lok Ayukta and it was rightly held that the Corporation cannot wriggle out of its liability to pay cash for the earned leave/full pay lave at the time of retirement. It was also noticed by the Lok Ayukta that pursuant to the agreement mentioned above, the Corporation had issued a consequential order by which it was clarified that any employee who retires after April 13, 1999 would be entitled to encash earned leave. It was in the above circumstances that the Lok Ayukta held that the Corporation was liable to honour its commitment and pay the leave surrender benefits to the employees.

6. Admittedly the respondents/complainants had made the claim after their retirement. In clause XXIV of the agreement, which is extracted supra, it is stipulated that the employee would be entitled to encash his earned leave at the

time of retirement. Therefore, the claim made by the respondents/complainants was undoubtedly in terms of the clause in the agreement and it was perfectly entertainable by the Lok Ayukta in view of clause (d) of Schedule II. The restrictive clause in the Second Schedule did not apply to the claim made by respondents/complainants obviously for the reason that it did not relate to action taken in respect of appointment, pay, superannuation, etc. It is explicit from the clause referred to above that any claim which arises on retirement can be considered by the Lok Ayukta. Undoubtedly, going by clause XXIV of the Agreement the claim made by the respondents fell within the jurisdiction of Lok Ayukta.

7. In this context, it may be pertinent to note that the Corporation had not raised the question of jurisdiction before the Lok Ayukta. However, learned Standing Counsel for the Corporation has raised the above question as a preliminary issue before this court in these writ petitions. For the reasons stated above, I have no hesitation to hold that the contention raised by the Corporation is wholly untenable.

8. It is lastly contended by the learned Standing Counsel that the financial position of the Corporation is very precarious and it may not be possible for the Corporation to meet the deadline fixed by the Lok Ayukta for payment because of financial constraints. Learned counsel submits that the Corporation may be granted some reasonable time to comply with the order if the contention raised by it on the question of jurisdiction is negatived.

Having regard to the entire facts and circumstances, I am satisfied that the

time for complying with the order passed by the Lok Ayukta can be enlarged till January 31, 2007. Ordered accordingly.

The writ petitions are disposed of in the above terms.

(A.K. Basheer)
Judge.

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